

MONTANA LEGISLATIVE HISTORY

Chapter 93 19 85

Bill H 210 S _____

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) Jan 21 ☒ c

1-25 ☒ c

2-16 ☒ c

2-18 ☒ c

Date Out 2-18 ☒ c

S. Committee on Judiciary

Hearing Date(s) Mar 06 ☒ c

_____ ☐ c

_____ ☐ c

_____ ☐ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE FINAL STATUS

3/19 TRANSMITTED TO GOVERNOR
 3/19 SIGNED BY GOVERNOR
 CHAPTER NUMBER 110 EFFECTIVE DATE: 3/19/85

HB 210 INTRODUCED BY CONNELLY, NELSON, ET AL.
 GENERALLY STRENGTHENING DRUNK DRIVING LAWS

1/16 INTRODUCED
 1/16 REFERRED TO JUDICIARY
 1/17 FISCAL NOTE REQUESTED
 1/21 HEARING
 1/23 FISCAL NOTE RECEIVED
 1/25 FISCAL NOTE REQUESTED
 1/30 FISCAL NOTE RECEIVED
 2/18 COMMITTEE REPORT-BILL PASS AS AMENDED
 2/19 2ND READING PASS AS AMENDED 66 27
 2/20 3RD READING PASS 84 15

TRANSMITTED TO SENATE
 2/22 REFERRED TO JUDICIARY
 3/06 HEARING
 3/06 COMMITTEE REPORT-BILL CONCURRED
 3/07 2ND READING CONCURRED 48 0
 3/09 3RD READING CONCURRED 48 0

RETURNED TO HOUSE
 3/14 SIGNED BY SPEAKER
 3/14 SIGNED BY PRESIDENT

3/14 TRANSMITTED TO GOVERNOR
 3/18 SIGNED BY GOVERNOR
 CHAPTER NUMBER 93 EFFECTIVE DATE: 10/01/85

HB 211 INTRODUCED BY EUDAILY, HARRINGTON, ET AL.
 INCREASE THE MAX. GENERAL FUND BUDGET SCHEDULES FOR
 ELEM. AND HIGH SCHOOL
 BY REQUEST OF SUPERINTENDENT OF PUBLIC INSTRUCTION
 & BOARD OF PUBLIC ED.

1/16 INTRODUCED
 1/16 REFERRED TO EDUCATION & CULTURAL RESOURCES
 1/17 FISCAL NOTE REQUESTED
 1/24 FISCAL NOTE RECEIVED
 2/04 HEARING
 3/04 COMMITTEE REPORT-BILL DO PASS
 3/21 2ND READING PASS AS AMENDED 72 27
 3/21 REREFERRED TO APPROPRIATIONS
 3/26 HEARING
 4/01 COMMITTEE REPORT-BILL DO PASS
 4/01 2ND READING PASS 95 3
 4/01 3RD READING PASS 97 3

TRANSMITTED TO SENATE
 4/03 REFERRED TO EDUCATION & CULTURAL RESOURCES
 4/12 HEARING
 4/16 COMMITTEE REPORT-BILL CONCURRED
 4/17 2ND READING CONCURRED 49 0
 4/19 3RD READING CONCURRED 50 0

RETURNED TO HOUSE

HOUSE BILL NO. 210

INTRODUCED BY CONNELLY, NELSON, VINCENT,
CHRISTIAENS, HAND, J. BROWN, BRADLEY, LORY

January 16, 1985	Introduced and referred to Committee on Judiciary.
January 17, 1985	Fiscal Note requested.
January 23, 1985	Fiscal Note returned.
January 25, 1985	New Fiscal Note requested.
January 30, 1985	New Fiscal Note returned.
February 18, 1985	Committee recommend bill do pass as amended. Report adopted.
	Bill printed and placed on members' desks.
February 19, 1985	Second reading, do pass as amended.
	Correctly engrossed.
February 20, 1985	Third reading, passed.
	Transmitted to Senate.

IN THE SENATE

February 22, 1985	Introduced and referred to Committee on Judiciary.
March 6, 1985	Committee recommend bill be concurring in. Report adopted.
March 7, 1985	Second reading, concurred in.
March 9, 1985	Third reading, concurred in. Ayes, 48; Noes, 0
	Returned to House.

IN THE HOUSE

March 11, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 210

INTRODUCED BY

*Connelly Richard A. Nelson Vincent
J. Brown Bradley Long*

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE CRIMINAL OFFENSE OF NEGLIGENT VEHICULAR ASSAULT WHILE UNDER THE INFLUENCE OF ALCOHOL; ESTABLISHING A PRELIMINARY BLOOD ALCOHOL CONTENT BREATH TEST; AND INCREASING THE PENALTY FOR THE SECOND AND THIRD CONVICTIONS FOR DRIVING WITH AN ALCOHOL CONCENTRATION OF 0.10 OR MORE; AMENDING SECTIONS 61-8-402, 61-8-404, AND 61-8-722, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Negligent vehicular assault -- penalty. (1) If a person operates a motor vehicle in a negligent manner because he is driving while under the influence of alcohol and his conduct is the proximate cause of serious bodily injury to another, he commits the offense of negligent vehicular assault.

(2) A person convicted of the offense of negligent vehicular assault shall be imprisoned in the state prison for a term not to exceed 3 years or be fined an amount not to exceed \$20,000, or both.

NEW SECTION. Section 2. Preliminary screening test of breath. A peace officer who has a particularized suspicion that a person may have been driving or in actual physical

control of a motor vehicle upon the ways of this state open to the public while under the influence of alcohol may request that person to submit to a preliminary screening test of his breath to determine his blood alcohol content. The test must be administered with a device and in a manner approved by the department of justice. The results of the test may be used to help the officer to decide whether an arrest should be made. In addition, or upon refusal to submit to this test, the officer may require testing under 61-8-402.

Section 3. Section 61-8-402, MCA, is amended to read:

"61-8-402. Chemical blood, breath, or urine tests. (1) Any person who operates a motor vehicle upon ways of this state open to the public shall be deemed to have given consent, subject to the provisions of 61-8-401, to a chemical test under this section of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of alcohol. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon ways of this state open to the public while under the influence of alcohol. The arresting officer may designate which one of the aforesaid

tests shall be administered.

(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a resident driver under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in subsection (1) of this section, none shall be given, but the officer shall, on behalf of the division, immediately seize his driver's license. The peace officer shall forward the license to the division, along with a sworn report that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon ways of this state open to the public, while under the influence of alcohol and that the person had refused to submit to the test upon the request of the peace officer. Upon receipt of the report, the division shall suspend the license for the period provided in subsection (5).

(4) Upon seizure of a resident driver's license, the peace officer shall issue, on behalf of the division, a temporary driving permit, which is valid for 72 hours after the time of issuance.

(5) The following suspension and revocation periods

are applicable upon refusal to submit to a chemical test under this section:

(a) upon a first refusal, a suspension of 90 days with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the division, a revocation of 1 year with no provision for a restricted probationary license.

(6) Like refusal by a nonresident shall be subject to suspension by the division in like manner, and the same temporary driving permit shall be issued to nonresidents.

(7) All such suspensions are subject to review as hereinafter provided."

Section 4. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible -- conditions of admissibility. (1) Upon the trial of any criminal action or other proceeding arising out of acts alleged to have been committed by any person in violation of 61-8-401 or 61-8-406:

(a) evidence of the amount of alcohol in the person's blood at the time of the act alleged, as shown by a chemical analysis of his blood, breath, or urine administered under 61-8-402, is admissible; and

(b) a report of the facts and results of any chemical test of a person's blood, breath, or urine administered

1 under 61-8-402 is admissible in evidence if:

2 (i) the breath analysis report was prepared and
3 verified by the person who performed the test or the blood
4 or urine test was a laboratory analysis and the analysis was
5 done in a laboratory operated by the department of justice
6 or by any other laboratory or facility certified or exempt
7 from certification under the rules of the department; and

8 (ii) the report was prepared in accordance with any
9 applicable rules of the department; and

10 (iii) if the test was on a blood sample, the person
11 withdrawing the blood must have been competent to do so
12 under 61-8-405(1).

13 (2) If the person under arrest refused to submit to
14 the test as hereinabove provided, proof of refusal shall be
15 admissible in any criminal action or proceeding arising out
16 of acts alleged to have been committed while the person was
17 driving or in actual physical control of a motor vehicle
18 upon the ways of this state open to the public, while under
19 the influence of alcohol.

20 (3) The provisions of this part do not limit the
21 introduction of any other competent evidence bearing on the
22 question of whether the person was under the influence of
23 alcohol."

24 Section 5. Section 61-8-722, MCA, is amended to read:

25 "61-8-722. Penalty for driving with excessive blood

1 alcohol concentration. (1) A person convicted of a violation
2 of 61-8-406 shall be punished by imprisonment for not more
3 than 10 days and shall be punished by a fine of not less
4 than \$100 or more than \$500.

5 (2) On a second conviction of a violation of 61-8-406,
6 he shall be punished by imprisonment for not less than 48
7 consecutive--hours 7 days or more than 30-days 6 months, at
8 least 48 hours of which must be served consecutively, and by
9 a fine of not less than \$300 or more than \$500. Three days
10 of the jail sentence may not be suspended unless the judge
11 finds that the jail sentence will pose a risk to the
12 defendant's physical or mental well-being.

13 (3) On a third or subsequent conviction of a violation
14 of 61-8-406, he shall be punished by imprisonment for not
15 less than 48-consecutive-hours 30 days or more than 6-months
16 1 year, at least 48 hours of which must be served
17 consecutively, and may be punished, in the discretion of the
18 court, by a fine of not less than \$500 or more than \$1,000.
19 The first 10 days of the jail sentence imposed for a third
20 or subsequent offense that occurred within 5 years of the
21 first offense may not be deferred or suspended.

22 (4) The provisions of 61-5-205(2), 61-5-208(2), and
23 61-11-203(2)(d) relating to revocation and suspension of
24 driver's licenses shall apply to any conviction under
25 61-8-406.

1 (5) In addition to the punishment provided in this
2 section, regardless of disposition, the defendant shall
3 complete an alcohol information course at an alcohol
4 treatment program approved by the department of
5 institutions, which may include alcohol or drug treatment,
6 or both, if considered necessary by the counselor conducting
7 the program. Each counselor providing such education or
8 treatment shall, at the commencement of the education or
9 treatment, notify the court that the defendant has been
10 enrolled in a course or treatment program. If the defendant
11 fails to attend the course or the treatment program, the
12 counselor shall notify the court of the failure.

13 (6) For the purpose of determining the number of
14 convictions under this section, "conviction" means a final
15 conviction, as defined in 45-2-101, or a forfeiture of bail
16 or collateral deposited to secure the defendant's appearance
17 in court, which forfeiture has not been vacated. An offender
18 is considered to have been previously convicted for the
19 purposes of this section if less than 5 years have elapsed
20 between the commission of the present offense and a previous
21 conviction. If there has been no additional conviction for
22 an offense under this section for a period of 5 years after
23 a prior conviction hereunder, then such prior offense shall
24 be expunged from the defendant's record."

25 NEW SECTION. Section 6. Codification instruction. (1)

1 Section 1 is intended to be codified as an integral part of
2 Title 45, and the provisions of Title 45 apply to section 1.
3 (2) Section 2 is intended to be codified as an
4 integral part of Title 61, and the provisions of Title 61
5 apply to section 2.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 125-85
Form BD-15

In compliance with a written request received January 17 19 85, there is hereby submitted a Fiscal Note for H.B. 210 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

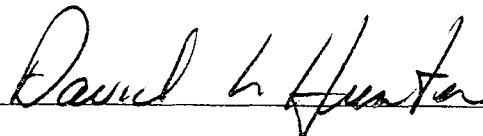
DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 210 establishes the criminal offense of vehicular assault while under the influence of alcohol; establishes a preliminary blood alcohol content breath test; and increases the DUI per se penalties for the second and third convictions for driving with an alcohol concentration of 0.10 or more.

ASSUMPTIONS:

1. The three year sentence in the bill would mean an individual could be paroled in seven months.
2. Assume 20% reduction in offenses from FY 83 to FY 85; 20% from FY 85 to FY 86; and 20% from FY 86 to FY 87.
3.

Suspended Sentences -	<u>FY 86</u>	<u>FY 87</u>
Impact on Probation Officers (additional probationers on caseloads)	591	473
Montana State Prison (additional commitments to Prison)	49	39
4. Given an individual serves seven months of a three year sentence and then is paroled, the maximum increase in the prison population would be 29 inmates in FY 86 and 23 in FY 87.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 23, 1985
HB 210

FISCAL IMPACT:

	<u>FY 86</u>	<u>FY 87</u>
Department of Institutions	\$85,844	\$68,083
General Fund Required	<u>\$85,844</u>	<u>\$68,083</u>

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURE:

The Department of Justice estimates the local governments would have a cost of:

<u>FY 1986</u>	<u>FY 1987</u>
\$55,800	\$54,000

STATE OF MONTANA
FISCAL NOTE

Amended
REQUEST NO. FNN 125-85

Form BD-15

In compliance with a written request received January 25, 19 85, there is hereby submitted a Fiscal Note for H.B. 210 Amended pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Amended H.B. 210 establishes the criminal offense of negligent vehicular assault while under the influence of alcohol and establishes a preliminary blood alcohol content breath test.

ASSUMPTIONS:

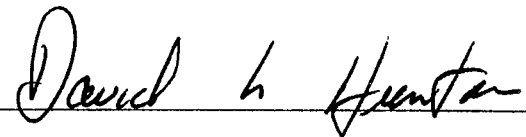
1. The language in the bill states that sentences are not to exceed one year. It is assumed that such offenses will be misdemeanors rather than felonies.
2. Assume 20% reduction in offenses from FY 83 to FY 85; 20% from FY 85 to FY 86; and 20% from FY 86 to FY 87.
3. It is assumed that the county jails will receive 98 committments in FY 86 and 78 committments in FY 87.
4. It is assumed that the average length of stay in the county jail will be 90 days.

FISCAL IMPACT:

Since the amended bill requires sentences to be served in county jails rather than the State Prison, there is no fiscal impact on state government.

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

	<u>FY 86</u>	<u>FY 87</u>
Jail Costs:	\$ <u>74,529</u>	\$ <u>59,319</u>
Supplies & Equipment	\$ <u>55,800</u>	\$ <u>54,000</u>
Total Estimated Cost	\$ <u>130,329</u>	\$ <u>113,319</u>



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 30, 1985

HB 210 AMENDED

(To be kept current -- post bills when entering being heard or leaving committee.)

Form CS-32

STATUS SHEET

FORTY-NINTH

LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
HB 115	1/7/85	1/9/85 1/11/85	(TABLED	1/11/85)					
HB 155	1/11/85	1/15/85	1/15/85	1/15/85					
HB 164	1/14/85	2/13/85	2/13/85			2/13/85			
HB 97	1/10/85	(died in committee)							
HB 181	1/14/85	1/18/85	1/18/85	1/18/85					
HB 157	1/12/85	1/17/85	(TABLED	1/17/85)					
HB 187	1/15/85	1/18/85	1/18/85			1/18/85			
HB 193	1/15/85	1/21/85	1/21/85		1/21/85				
HB 200	1/16/85	1/23/85	1/23/85			1/23/85			
HB 207	1/16/85	1/23/85	1/23/85		1/23/85				
HB 210	1/16/85	1/21/85 1/25/85	(Tabled bill 1-25-85)		(Reconsidered on 2/16/85) DO PASS AS AMENDED 2/18/85)				Passed out of committee on
HB 222	1/17/85	1/21/85	(TABLED	1/21/85)					
HB 246	1/18/85	1/24/85	1/24/85	1/24/85					
HB 265	1/18/85	1/22/85 2/12/85	2/12/85			2/12/85			
HB 275	1/19/85	1/22/85	(died in committee)						

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 21, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Monday, January 21, 1985 at 9:00 a.m. in Room 312-3 of the State Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 193: Hearing commenced on HB 193. Rep. Richard Nelson, the bill's chief sponsor, testified in its support. He informed the committee the bill was introduced at the request of Judge Michael Keedy from the 11th Judicial District in Kalispell, Montana. He stated that this bill would basically allow the Justice of the Peace to impose certain restrictions on a sentence. No further proponents testified on behalf of this bill.

Jim Jensen, representing the Montana Magistrates Association, testified in opposition to the bill. He stated that he has several concerns regarding the authority question of the bill. He said the bill would limit people's freedom in ways that they are not presently limited. He also stated that he doesn't feel that the J. P.s and city judges are prepared to make these decisions that would be allowed following the passage of this bill. Mr. Jensen referred to two subsections of the bill, in particular. He said that people make the decision by being able to elect those legislators whom they want. He further feels that subsection (e) of the bill would allow for a large loophole which would include the ability to deprive someone involuntarily of their freedom. Justice of the Peace's should not be able to make some of these decisions the bill would allow for.

Karl Englund, representing the Montana Trial Lawyers, stated his opposition to HB 193. He informed the committee that a bill introduced by Senator Fuller would be the better one to adopt.

There being no further proponents or opponents, Rep. Nelson closed with no further comments.

Rep. Addy asked Rep. Nelson if there was any particular incident in the Kalispell area that arose as a result of this bill's introduction. Although Rep. Nelson knew of none, he did say that Judge Keedy had experienced some problems in this particular area.

Rep. Bergene asked Rep. Nelson if the senate bill earlier referred to met with Rep. Nelson's approval. He stated that he was unfamiliar with that particular bill.

Rep. Gould asked Mr. Jensen if this bill would provide more leverage in requiring that J. P.'s be lawyers. Mr. Jensen stated that he doesn't see that as a motive.

There being no further questions or discussion, hearing closed on HB 193.

CONSIDERATION OF HB 210: Rep. Connelly, chief sponsor of HB 210, testified in support of it. She said this bill deals with two separate statutes. It would allow a peace officer to take a preliminary screening breath test to determine a person's alcohol concentration. The bill would also increase penalties. Rep. Connelly submitted some proposed amendments for the committee's information. She stated that the amendments were made because the bill, as originally drafted, did not clarify the penalty provisions of the per se DUI violation. Her amendments would repeal 61-8-714 and merge the penalties for violations of the traditional DUI and violations for per se in 61-8-722. (See Exhibit A)

Col. R. W. Landon, chief of the Montana Highway Patrol, testified in support of the bill. He stated that currently, an officer can administer a chemical test to determine a person's alcohol concentration. This does not affect the voluntary consent law at all. He said the main thing they are trying to accomplish through this bill is to provide a deterrent to keep people from both drinking and driving. He said that 23 states currently have adopted this type of legislation. Again, he emphasized the fact that the preliminary screening breath test would not be used as evidence. Col. Landon illustrated the two different types of devices that are used in determining alcohol concentration. He showed them the Alcotest which costs approximately \$1.00 per use. The second device was the Alcotest Censure 3 which would cost considerably more to use. He feels the bill will certainly cause the highways to become even safer. He informed the committee that deaths on the highways have declined as a result of stiffer DUI laws.

Kimberly Kradolfer, assistant attorney general, spoke in favor of the bill. A copy of her testimony was submitted to the secretary and marked as Exhibit B. She stated that there are no penalties for refusal of the preliminary screening test, just as there are not penalties for refusing any other field test. She said that section 1 will

create the offense of negligent vehicular assault. It will provide penalties of up to three years in prison and/or a fine not to exceed \$20,000. There were no further proponents of HB 210.

Jim Jenson, representing the Montana Magistrates Association, testified in opposition to the bill. He said his concern comes from the penalty portion of the bill. He feels that the legislation that was passed in the 1983 legislative session is adequate and working effectively. He feels that communities are being well informed about the consequences of drinking and driving at the same time.

There being no further opponents of the bill, Rep. Connelly made a few closing remarks. She said that the fact that people have to wait until their jail time can be served is in itself a deterrent.

Chairman Hannah opened the floor up for discussion at this time.

Rep. Brown expressed various problems with the bill that he said he would bring up during executive session.

Rep. Eudaily asked Col. Landon if a person had taken medicine with alcohol in it, and that person were asked to take a breath screening test, would the test prove to be positive. Rep. Landon said it would be possible, but the test can be administered in such a way to minimize that particular problem.

A question was asked in regards to the fiscal impact this bill would necessitate. Col. Landon felt that it would be in the neighborhood of \$12,000 if the alcotest method were used. However, he doesn't think this figure would come out of the department's budget but rather from the National Highway Safety funds. He doesn't know what the fiscal impact would be if the alcotest censure 3 were used.

Rep. Eudaily asked if the department could be held liable for endorsing tests. It was Ms. Kradolfer's opinion that this would, in fact, reduce the liability question because people that could be capable of causing an accident would not be released.

In response to a question, Ms. Kradolfer stated that the initial test administered is not scientifically reliable. The basic purpose of the field test is to give the officer one more test to establish probable cause to arrest.

15

There was further discussion regarding the bill, but the chairman requested Brenda Desmond, the committee's legislative researcher and attorney, to prepare a legislative history of this particular issue. A fiscal note is also being prepared for this bill. The chairman informed the committee that this bill would be acted on at a later date following the review of the fiscal note and Ms. Desmond's legislative history summary.

CONSIDERATION OF HOUSE BILL NO. 222: Rep. Richard Nelson, chief sponsor of this bill, briefly testified. Again, he said this bill was requested by the 11th Judicial District. This bill would address the question of the ability of a person to pay a penalty. Upon hearing testimony regarding HB 210, Rep. Nelson stated that he would like to withdraw this bill. He feels he could coordinate his efforts better with the proponents of HB 210. Chairman Hannah asked if there were any other proponents or opponents who would like to go on record as either supporting or not supporting this bill. Jim Jenson, representing the Montana Magistrates Association, stated his support for this bill. There being no further testimony requested or discussion requested, hearing on HB 222 closed.

ACTION ON HB 222: Representative O'Hara moved that HB 222 BE TABLED. The motion was seconded by Rep. Keyser. The motion carried with Representatives Bergene, Krueger, Brown and Miles dissenting. It was Rep. Bergene's feeling that action should be taken on this bill rather than to just table it.

ACTION ON HB 193: Representative Brown moved that HB 193 DO NOT PASS. The motion was seconded by Rep. Rapp-Svercek. Discussion followed.

Rep. Brown said that people pay little attention to Justice of the Peace elections. He feels that J.P.'s are not qualified to make some decisions. He feels this bill goes beyond the power of what the traditional view has been. He feels the present system works just fine.

Rep. Bergene stated her support for the motion. She stated that she was interested to see the senate bill that has been introduced. Rep. Brown said that with or without the senate bill, he opposed this bill. The question was called, and the motion passed with only Rep. Gould dissenting.

Before adjourning, Chairman Hannah informed the committee that we would be switching rooms with the House Taxation Committee this Wednesday.

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1/21/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

My name is Kimberly Kradolfer and I am an Assistant Attorney General for the State of Montana. I would like to speak as a proponent of HB 210. I will briefly address Sections 1 and 2, but I would like to do so in reverse order.

SECTION TWO---Preliminary screening breath test

Section Two would allow a peace officer to request a motorist to take a preliminary screening breath test to determine his alcohol concentration. This could be done only where the officer had a particularized suspicion that the person may have been drinking or in actual physical control of a motor vehicle upon the ways of the state open to the public while under the influence of alcohol. The test could then be used by the officer to help him decide whether to place the driver under arrest.

This section is based upon a model law which was drafted by the National Committee on Uniform Traffic Laws and Ordinances. It differs from the model law in that it uses language that is consistent with Montana's existing statutes on alcohol and driving related offenses. ("driving or in actual physical control of a motor vehicle upon ways of the state open to the public"). It also incorporates the standard set by the Montana Supreme Court for a traffic stop: "particularized suspicion." That standard was set out in State v. Gopher, 631 P.2d 293 (1981). It allows the officer to make an investigatory stop of brief duration to determine whether someone is engaged in wrongdoing, was engaged in wrongdoing, or is a witness to wrongdoing. It is similar to the Terry v.

Ohio "stop and frisk" standard for an individual on foot. In Gopher, the Court specifically considered the police interest involved (which here would be to increase highway safety and to remove unsafe drivers from the public byways). It held that where objective facts and circumstances existed from which an experienced officer could make certain inferences, and where that resulted in a suspicion that the occupant of a vehicle is or has been engaged in wrongdoing or was a witness to criminal wrongdoing, the particularized suspicion justified stop of the vehicle.

A preliminary breath screening test would be utilized only where the officer had developed that "particularized suspicion." The test would be used as just one more field test to aid the officer in making a determination of whether there was probable cause to place the person under arrest. It is a test which can be handled quickly on the scene. It is no more obtrusive than any other field test done in a DUI investigation. There are no penalties for refusal of the preliminary screening test, just as there are no penalties for refusing any other field test. There is still an incentive for a driver to take the test, however: If, indeed, that driver is not impaired, taking the test will speed him on his way----the officer will be able to release him. That is an incentive when you realize that many DUI investigations begin as stops for another reason, from which evidence of DUI (alcoholic odor on breath, etc.) then develop\$. Many investigations begin as a Safety Spotcheck, an approach to see if someone needs assistance, or a stop on a minor traffic violation or equipment violation.

The preliminary screening test will provide one more tool---and a very valuable one---to peace officers in their fight against drunk drivers. Currently, the average breathalyzer score is approximately 0.186---significantly higher than the 0.10 presumption of impairment created by statute. This tool will help the officer to better judge when that "borderline" case is truly not safe to go. It will, therefore, help to get those impaired drivers off our highways----and to lessen what our Montana Supreme Court has most recently characterized as the "slaughter on our highways." Bozeman v. Armfield, January 3, 1985.

*NOTE: The National Committee on Uniform Traffic Laws and Ordinances has indicated that at least 23 other states have some sort of preliminary screening breath test statute now.

SECTION ONE---Negligent vehicular assault

This section will create the offense of negligent vehicular assault. It will provide penalties of up to 3 years in prison and/or a fine not to exceed \$20,000. The elements of the offense as created would be four. The prosecution would have to demonstrate that :

1. the driver was negligent because he
2. operated a vehicle while under the influence of alcohol and that
3. his conduct was the proximate cause of
4. serious bodily injury.

This offense will allow prosecution only where all four elements are present: the driver actually had to negligent in some manner because of his drinking and that cause serious bodily injury.

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This offense will allow prosecution in the situation where the driver is so impaired that he cannot behave purposely or knowingly and someone is injured seriously. Currently, if the driver is that impaired, he may be charged with negligent homicide if the victim dies. If the victim lives, all that can be charged under the current law is DUI, driving while an habitual offender, or some like misdemeanor offense.

In State v. Pierce, 647 P.2d 847 (1982), the Montana Supreme Court upheld a conviction for aggravated assault in an injury situation. There, however, the state had to prove that the defendant was capable of behaving purposely or knowingly---a higher mental state requirement to establish. In Pierce, the defendant ran from the scene of the accident because he was scared. In at least two other alcohol-related cases which come to mind, the defendant was so impaired that he had no ability to form the mental state of purposely or knowingly. In State v. Campbell, 615 P.2d 190(1980), the defendant was absolutely incoherent after the accident. No one involved in the accident has any memory left of it. One victim died, so Campbell was able to be prosecuted for negligent homicide. Had that victim not died, all that the defendant could have been prosecuted for would have been DUI and driving while adjudged an habitual offender----even though one of his other victims, a Highway Patrol officer who was racing to the scene of another accident with siren blaring and lights flashing, is permanently paralyzed. Similarly, in State v. Lapp, 658 P.2d 400 (1983), the defendant was disoriented and incoherent

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at the scene. He was so disoriented, in fact, that he attempted a search of the area for his twin daughters, whom he was sure had been thrown from the scene. They had not been in the car with him at all.

Section One will allow prosecution for those situations where a defendant may not be capable of forming the mental state of purposely or knowingly because he is so impaired before he ever gets into the car and where that negligence results in serious bodily injury to another.

(37) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(58) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(33) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(59) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

PROPOSED AMENDMENTS TO HB 210, INTRODUCED COPY:

1. Title, line 8.

Following: line 7

Strike: "THE SECOND AND THIRD CONVICTIONS FOR"

2. Title, line 9.

Following: "MORE"

Insert: "TO PROVIDE THE SAME PENALTY AS THE PENALTY FOR
DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS"

Following: "SECTIONS"

Insert: "61-8-401,"

3. Title, line 10.

Following: "MCA"

Insert: "; AND REPEALING SECTION 61-8-714, MCA"

4. Page 2, line 11.

Following: line 10

Insert: "Section 3. Section 61-8-401, MCA, is amended to
read:

"61-8-401. Persons under the influence of alcohol
or drugs. (1) It is unlawful and punishable as
provided in ~~61-8-714~~ 61-8-722 for any person who is under
the influence of:

(a) alcohol to drive or be in actual physical
control of a motor vehicle upon the ways of this state
open to the public;

(b) a narcotic drug to drive or be in actual
physical control of a motor vehicle within this state;

(c) any other drug to a degree which renders him
incapable of safely driving a motor vehicle to drive
or be in actual physical control of a motor vehicle
within this state; or

(d) alcohol and any drug to a degree that
renders him incapable of safely driving a motor
vehicle to drive or be in actual physical control of a
motor vehicle within this state.

(2) The fact that any person charged with a
violation of subsection (1) is or has been entitled
to use alcohol or such a drug under the laws of this
state does not constitute a defense against any charge of
violating subsection (1).

(3) Upon the trial of any civil or criminal action
or proceeding arising out of acts alleged to have been
committed by any person driving or in actual physical
control of a vehicle while under the influence of
alcohol, the concentration of alcohol in the person's
blood at the time alleged, as shown by chemical
analysis of the person's blood, urine, breath, or other
bodily substance, shall give rise to the following
presumptions:

(a) If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any presumption that the person was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol. Such presumption is rebuttable.

(4) The provisions of subsection (3) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol.

(5) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, ~~61-8-714~~, 61-8-722, and subsections (1) through (4) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided.""

Renumber: subsequent sections

5. Page 2, line 17.

Following: "determining the"

Strike: "alcoholic content"

Insert: "alcohol concentration"

6. Page 2, line 18.

Following: "blood"

Insert: ", breath, or urine"

7. Page 6, line 1.

Following: "concentration"

Insert: "or under the influence of alcohol or drugs"

8. Page 6, line 2.

Following: "of"

Insert: "either 61-8-401 or"

Following: "imprisonment"

Insert: "in the county jail for not less than 24 consecutive hours or"

9. Page 6, line 3.

Following: "than"

Strike: "10"

Insert: "60"

10. Page 6, line 4.

Following: "\$500."

Insert: "The jail sentence may not be suspended unless the judge finds that the sentence will pose a risk to the defendant's physical or mental well being."

11. Page 6, line 5.

Following: "violation of"

Insert: "either 61-8-401 or"

12. Page 6, line 14.

Following: "of"

Insert: "either 61-8-401 or"

13. Page 6, line 25.

Following: line 24

Insert: "61-8-401 or"

14. Page 7, line 25.

Following: line 24

Insert: NEW SECTION. Section 6. Repealer. Section 61-8-714, MCA, is repealed."

Renumber: subsequent section

PC5HB210.13

LH/MacMASTER

JUDICIARY

COMMITTEE

DATE 1/21/85

SPONSOR Rep. Connelly

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 25, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Friday, January 25, 1985 at 8:00 a. m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Representative Gould who had been previously excused.

CONSIDERATION OF HB 69: Representative Addy moved to take HB 69 off the table. The motion was seconded by Representative Hammond. Representative Addy explained that he wanted to reconsider HB 69 because Representative Bradley has a few proposed amendments she would like to address before the committee today. A copy of her amendments were submitted and were marked as Exhibit A. Motion passed with Representatives, Hannah, Keyser, Grady and Krueger dissenting. Representative Bradley briefly addressed the proposed amendments she submitted.

In response to a question, Brenda Desmond, the committee's researcher stated that all abuse or sexual contact minor victims will not come within this bill. Those over 10 don't come within it, and those who are available for testimony at the trial don't come within it.

Mr. Marc Racicot, attorney from the office of the Attorney General, stated that the main change made by the amendments is to delete the definition of unavailability which is already defined in case law. He stated that he thinks the bill is constitutional on its face. He said this bill is really not the panacea that some of the witnesses thought it was. He feels the bill with the amendments will not go as far as he thought it was intended to.

Representative Addy wanted to know where the bill provides the defendant the opportunity to cross-examine. He stated that he didn't see that safeguard in the bill. Representative Bradley doesn't think there would be that much court abuse regarding this question. She said there is a very heavy burden upon the court to make the determination of availability and liability.

Representative Bradley feels that if an exception to the hearsay rule is not made in almost every single case where the child is five years or younger, you will never bring a case to court because that child can't remember that long.

Mr. Mike McGrath, county attorney for Lewis and Clark County, stated that once you have children at a very young age and who are unable to articulate what has happened to them perhaps in four, five, or six months prior, the guarantee that Representative Addy is looking for is well established in case law. There are presently 24 exceptions to the hearsay rule. This, in effect, would codify the 25th exception.

In response to a question asked by Representative Hannah, Mr. McGrath stated that the rules of evidence as we have it now in Montana, were new rules of evidence that were adopted by a court rule and ratified by the Legislature. They were based on federal rules of evidence that were adopted by the federal system. Historically, in this area of evidence, the courts have initially set the rules.

In response to a question asked by Representative Krueger, Mr. McGrath said the reason requested for striking chapter 3 is to allow the bill to apply in all youth court proceeding.

Representative Keyser stated he really has a problem accepting this amendment. He feels that S.R.S. and every other department connected with child abuse would have the power to use video-taping in so many different areas. By striking chapter 3, he feels it would be left wide open which is not a good idea.

Representative Mercer agreed with Representative Keyser on this issue. He feels by deleting chapter 3 would completely change the way things are handled. He feels it would waste both time and money. He also feels it is out of line for the Legislature to propose a rule of evidence of this kind. It may be appropriate by resolution to recommend or request the Supreme Court to adopt a rule. All the hearsay rules as they are now are Supreme Court rules. He further believes the whole bill is unneeded.

Representative Krueger agreed with Representative Mercer. He feels that the bill has been expanded to a much greater area than originally intended. He said that we are cutting across a lot of areas dealing with sexual abuse with the inclusion of video-taping in all proceedings such as dependancy and neglect.

At this time, Representative Krueger moved that HB 69 DO NOT PASS. The motion was seconded by Representative Grady. After further discussion, a vote was taken on the motion. The motion carried 10-7. (See roll call vote.)

CONSIDERATION AND ACTION ON HB 210: Representative Brown moved that HB 210 DO NOT PASS. The motion was seconded by Representative Krueger. Representative Brown said he is especially opposed to the bill with the amendments offered by the sponsor. Representative Brown referred to a letter received from Curt Chisholm from the Department of Institutions. The letter stated that there would be an increase in the workload of probation officers in addition to increasing the prison population.

Representative Brown feels there has been a substantial reduction in the number of DUI's since stricter laws dealing with DUI have been adopted. He feels this will also put an additional burden on police officers.

Representative O'Hara believes that tougher laws deter crime. Representative O'Hara also stated his support for the portion of the bill dealing with the preliminary screening test. He fully supports the bill.

Representative Brown stated in response to Representative O'Hara that he feels the bill is going well beyond its purpose. He further believes that the preliminary screening test would put an additional burden on the police officers.

Representative Keyser said during his experience as a police officer, there had to be a good reason for his pulling someone over. He thinks that the majority of the police officers will not abuse this law. He further stated that although he likes the preliminary screening test portion of the bill, he feels the penalties are too stiff and would therefore, be counter-productive.

Representative Connelly said that passage of this bill would provide stricter penalties to the person who caused serious bodily injury to another individual if he were convicted of DUI.

Representative Addy stated that there are all kinds of civil liability remedies available. He feels that penalties provided for in the "per se" DUI's should be left as is.

It was Representative Mercer's opinion that the portion of the bill dealing with negligent vehicular assault should be preserved. He further moved to amend HB 210 by eliminating the bill in its entirety with the exception of Section 1. The title would be amended by striking on line 6, all the language following the word, "ALCOHOL". The motion was seconded by Representative Keyser and discussion followed.

Representative Miles agrees with Representative Mercer's feelings that the portion of negligent vehicular assault should be preserved. She further agrees with Representative Brown's comments concerning the prison population problem. But she feels that overcrowded prison is a bad reason to determine whether or not there is criminal activity going on.

Representative Keyser looks at the chemical blood test as a tool. It provides a tool for the officer. He doesn't think it can be abused that much.

Representative Mercer moved to divide the question. He moved to amend section 1 as he proposed. The first question would be to delete sections 5 and 6 and amend section 1. The second idea would be whether or not to delete the whole idea of preliminary screening test.

Representative Keyser stated that the first motion basically is to adopt a new section of law--section 1 with amendments to that. Representative Keyser stated that Representative Mercer's sole motion so far is one motion to adopt section 1.

Representative Mercer made a substitute motion to change section 1 as specified and delete sections 5 and 6 and further adjust the title accordingly.

Representative Krueger made a substitute motion to delete everything from beyond section 1 i.e. 2, 3, 4, 5 and section 6. It was seconded by Representative Brown.

Representative Krueger further moved to revert to Representative Mercer's original motion which would make section 1 a misdemeanor and would further strike the remaining material in the bill. To provide the committee with some clarification and organization, Representative Krueger withdrew his substitute motion, and Representative Mercer withdrew his substitute motion.

Representative Mercer further moved to amend section 1 in the manner that was previously discussed. The title would not be included in that motion. The motion would also include striking the word, "because" on line 15 and inserting the word, "and". The motion was seconded by Representative Addy.

Representative Hannah clarified Representative Mercer's motion to amend section 1. On line 20 of page 1 after the word, "be", the following material would be inserted: "fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed six months, or both." The material following would be stricken in its entirety.

Representative Krueger made a substitute motion to insert "\$1,000" instead of the proposed \$500. Said motion was seconded by Representative Addy. The motion carried with Representatives Darko, Miles, Bergene, Eudaily, O'Hara, Hannah, and Grady dissenting.

Representative Bergene moved to amend the newly adopted amendment by inserting after "six months" the words, "to 1 year or less". The motion carried 10-6. (see roll call vote)

Representative Keyser moved to delete section 5 in its entirety. The motion was seconded by Representative O'Hara and passed unanimously.

Representative Miles moved that HB 210 DO PASS AS AMENDED. The motion was seconded by Representative Hammond.

Representative Addy made a substitute motion to delete sections 2, 3, 4 and 6 of the bill. This motion deals with the preliminary screening test. The motion was seconded by Representative Krueger and it failed 10-7. (See roll call vote)

Representative Brown moved to amend section 2, page 2, line 4 following the word, "content." by adding a new sentence, "The officers shall inform the offender that the preliminary screening test may be refused and that his license may not be revoked for refusal." The motion was seconded by Representative Keyser.

A brief discussion followed. Representative O'Hara feels that this amendment would do away with a lot of the intent. The question was called for and motion carried with Representative O'Hara dissenting.

Representative Addy further moved to strike on page 2, line 8, the following language, "In addition, or upon refusal to submit to this test, the officer may require testing under 61-8-402." The motion was seconded by Representative Mercer and carried unanimously.

Representative Brown stated that a fiscal note should be drawn up before the bill leaves the committee. Representative Brown further moved that HB 210 BE TABLED until an appropriate fiscal note can be drawn up. Representative Montayne seconded the motion, and it carried 12-4.

ADJOURN: Upon motion of Representative Keyser, and that motion being seconded, the meeting was adjourned at 10:20 a. m.

Tom Hannah
REPRESENTATIVE TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1-25-85

NAME	PRESENT	ABSENT	EXCUSED
<u>Tom Hannah (Chairman)</u>	✓		
<u>Dave Brown (Vice Chairman)</u>	✓		✓
<u>Kelly Addy</u>	✓		
<u>Toni Bergene</u>	✓		
<u>John Cobb</u>	✓		
<u>Paula Darko</u>	✓		
<u>Ralph Eudaily</u>	✓		
<u>Budd Gould</u>			✓
<u>Edward Grady</u>	✓		
<u>Joe Hammond</u>	✓		
<u>Kerry Keyser</u>	✓		
<u>Kurt Krueger</u>	✓		
<u>John Mercer</u>	✓		
<u>Joan Miles</u>	✓		
<u>John Montayne</u>	✓		
<u>Jesse O'Hara</u>	✓		
<u>Bing Poff</u>	✓		
<u>Paul Rapp-Svrcek</u>	✓		

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-25-85 BILL NO. HB 210 TIME 10:05

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould		
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne		✓
Jesse O'Hara	✓	
Bing Poff		✓
Paul Rapp-Svrcek		
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Bergene moved to amend the newly adopted amendment
by inserting after "six months" the words, "to 1 year or less".
 The motion carried 10-6.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1/25/85 BILL NO. 210 TIME 10:10

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene		✓
John Cobb		✓
Paula Darko		✓
Ralph Eudaily		✓
Budd Gould		
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer		✓
Joan Miles		✓
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Addy moved to delte sections 2, 3, 4 and 6
of the bill. This motion deals with the preliminary screening
test portion of the bill. The motion was seconded by Rep. Krueger
and failed 10-7.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1/25/85 BILL NO. 210 TIME 10:20

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould		
Edward Grady	✓	
Joe Hammond	✓	
Kerry Keyser	✓	✓
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles		✓
John Montayne	✓	✓
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Brown moved that HB 210 BE TABLED until an appropriate fiscal note can be prepared. Rep. Montayne seconded the motion, and it carried 12-4.

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 16, 1985

An executive session of the Judiciary Committee was called to order by Chariman Tom Hannah on Saturday, February 16, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Montayne and Rep. Brown. (Rep. Brown arrived later).

ACTION ON HOUSE BILL NO. 577: Rep. O'Hara moved that HB 577 DO PASS. The motion included adopting the Statement of Intent. The motion was seconded by Rep. Gould.

Rep. Addy moved to amend the bill as follows: Page 5, line 17 following "ranges" insert "so long as the minimum rate is fully compensatory". On page 11, following line 11 insert: "NEW SECTION. Section 15. No preemption of laws governing anti-competitive activity. Nothing in (Sections 1 through 10 and 13) in any way preempts, abrogates, or otherwise affects any right, liability, or obligation arising from any federal or state law regarding unfair business practices or anticompetitive activity." The motion was seconded by Rep. Darko and carried with Rep. Keyser dissenting.

Rep. Addy moved that HB 577 DO PASS AS AMENDED. The motion was seconded by Rep. Gould, and discussion followed.

Rep. Keyser feels the bill should pass because regulations should be placed before the various companies find themselves involved in a lawsuit. The question was called, and motion to pass as amended carried unanimously.

ACTION ON HOUSE BILL NO. 380: Rep. O'Hara moved that HB 380 DO PASS. The motion was seconded by Rep. Miles. The question was called, and the motion carried unanimously.

ACTION ON HOUSE BILL NO. 481: Rep. Keyser moved that HB 481 DO PASS. The motion was seconded by Rep. O'Hara, and carried unanimously.

ACTION ON HOUSE BILL NO. 541: Rep. Darko moved that HB 541 DO PASS. The motion was seconded by Rep. Mercer and carried unanimously.

ACTION ON HOUSE BILL NO. 585: Rep. Gould moved that HB 585 DO PASS. The motion was seconded by Rep. O'Hara and discussed.

ACTION ON HOUSE BILL NO. 622: Rep. Keyser moved that HB 622 DO PASS. The motion was seconded by Rep. Gould and discussed. The motion carried unanimously.

ACTION ON HOUSE BILL NO. 528: Rep. Addy moved that HB 528 DO NOT PASS. The motion was seconded by Rep. Rapp-Svrcek and discussed.

Rep. Keyser feels the bill is badly written. He gets the impression that there are four or five sections in the bill which are objectional to the committee.

Rep. Hannah agreed that while the intent of the bill is not unreasonable, there are other problems with the bill.

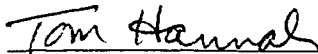
With that the question was called, and the motion carried with Reps. Hannah and O'Hara dissenting.

RE-CONSIDERATION OF HOUSE BILL NO. 366: Rep. Brown moved to reconsider action on HB 366 for the purposes of tabling the bill. The motion was seconded by Rep. Addy. Rep. Keyser stated his strong objection to this motion. The motion to reconsider HB 366 carried 10-8. (See roll call vote.)

Rep. Brown further moved to table HB 366. The motion was seconded by Rep. Addy, and the motion failed due to a tie vote 9-9.

RE-CONSIDERATION OF HOUSE BILL NO. 210: Rep. O'Hara moved that HB 210 be taken off the table. The motion was seconded by Rep. Bergene, and a roll call vote was taken. The motion carried 10-7. (Rep. Miles did not vote.) Further action on HB 210 will take place later.

ADJOURN: A motion having been made and seconded, the meeting was adjourned at 1:00 p.m.



REP. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

EXECUTIVE SESSION - 7:00 a.m.

Date 2/16/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne		✓	
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/16/85

EXECUTIVE SESSION - 12:20 p.m.

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		✓
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 2/16/85 BILL NO. HB 210 TIME 1:00 p.m.

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene	✓	
John Cobb	✓	
Paula Darko		✓
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser	✓	
Kurt Krueger		✓
John Mercer	✓	
Joan Miles		
John Montayne		✓
Jesse O'Hara	✓	
Bing Poff		✓
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. O'Hara moved to take HB 210 off the table.

The motion was seconded by Rep. Bergene and carried 10-7.

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 18, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Monday, February 18, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 329: Rep. Tom Hannah, House District #82, chief sponsor of H.B. 329, testified in its support. Rep. Hannah said that H.B. 329 is an ongoing attempt to define lien laws. Rep. Hannah informed the committee that a comprehensive bill which would revise all of the lien laws was introduced in the Senate. It was tabled with the idea that other compromising legislation would be worked out. Rep. Hannah submitted materials which were marked Exhibit A and hereto attached.

Rep. Gary Spaeth also testified as a proponent to H.B. 329. He stated that there are problems with the present lien laws, and something still has to be done in this area.

Larry Huss, attorney for Mountain Bell Telephone, testified in support of H.B. 329. He stated that the problem in dealing with liens is that an individual is always subject to the good faith of his contractor. If the contractor has financial problems, he may deal with the person with less than full disclosure. That person has no way, short of asking the contractor, of knowing who all the suppliers are and whether or not they are being paid. He believes the bill creates a climate that goes from one extreme to the other which would place a burden on the supplier. Mr. Huss suggested a provision be made for some sort of notice from the supplier to the homeowner or to the owner of the project in order that there be actual knowledge by both parties pointing out who is involved in the contract; thus, each side is able to protect himself by giving notice and communicating as to what the bill will be in order to insure that the payment is made before the final disbursement of the loan contract is announced. Mr. Huss submitted an amendment to H.B. 329 which deals with actual notice. The amendment was marked as Exhibit B and attached.

There being no further proponents, Vice-Chairman Dave Brown asked the opponents to testify.

Irvin E. Dellinger, executive secretary of the Montana Building Materials Dealer's Association, appeared and urged the committee to either kill or table this bill.

reversed, and H.B. 473 was reported out of committee with a DO NOT PASS AS AMENDED recommendation.

ACTION ON HOUSE BILL NO. 477: (This bill was re-referred back to committee.) Rep. Addy moved to amend the second reading copy of H.B. 447 as follows:

1. Title, line 6.

Following "OF"

Insert: "NO MORE THAN 50% OF"

2. Page 1, line 17.

Following: "(b)"

Insert: "to the extent of 50% of any payment under this chapter"

The motion was seconded by Rep. Hammond, and a roll call vote was taken. The motion to amend carried 10-7.

Rep. Rapp-Svrcek moved that H.B. 447 DO PASS AS AMENDED. The motion was seconded by Rep. Miles and carried with Rep. Brown, Montayne, Cobb, and Eudaily dissenting.

ACTION ON HOUSE BILL NO. 210: Rep. O'Hara moved that H.B. 210 DO PASS. The motion was seconded by Rep. Keyser and discussed.

Rep. O'Hara stated that in talking with Curt Chisholm, Department of Institutions, H.B. 210 will have very little impact.

Rep. O'Hara further moved to amend the bill by striking sections 2 and 3 in their entirety. The motion was seconded by Rep. Brown and carried unanimously.

Rep. O'Hara further moved that H.B. 210 DO PASS AS AMENDED. The motion was seconded by Rep. Rapp-Svrcek.

The other amendments to H.B. 210 were adopted by the committee during the January 25, 1985 meeting. (See standing committee report and the 1/25/85 minutes)

Rep. Brown stated that he still has a problem with the bill, and he referred to committee the H.B. 210 redux. He made a substitute motion to kill the bill. The motion was seconded by Rep. Montayne. Following further discussion, the question was called on the DO NOT PASS AS AMENDED motion, and the motion failed with Reps. Brown, Montayne, Grady and Bergene voting in favor of the motion.

Without objection, the vote was reversed, and H.B. 210 left the committee with a DO PASS AS AMENDED recommendation.

ADJOURN: A motion having been made and seconded, the meeting adjourned at 11:05 a.m.

Tom Hannah
Rep. Tom Hannah, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/18/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

.....February 12..... 19 85.....

page 1 of 2

MR. SPEAKER:.....

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 210

FIRST reading copy (WHITE)
color

GENERALLY STRENGTHENING DRUNK DRIVING LAWS

Respectfully report as follows: That HOUSE Bill No. 210

be amended as follows:

1. Title, line 6.

Following: "ALCOHOL"

Strike: "; ESTABLISHING" through "61-8-722, MCA" on line 10.

2. Page 1, line 15.

Strike: "because"

Insert: "and"

3. Page 1, line 20.

Following: "shall be"

Insert: "fined an amount not to exceed \$1,000 or"

Following: "the"

Strike: "state prison"

Insert: "county jail"

XDD:PASSX

.....(continued).....

STATE PUB. CO.
Helena, Mont.

Chairman.

COMMITTEE SECRETARY

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February 18

19 85

page 2 of 2 (HB 210)

4. Page 1, line 21.

Strike: "3 years" through "\$20,000" on line 22.

Insert: "1 year"

5. Page 1, following line 22.

Strike: Sections 2 through 5 in their entirety.

renumber subsequent section

6. Page 7, line 25.

Strike: "(1)"

7. Page 8, following line 2.

Strike: subsection (2) in its entirety.

AND AS AMENDED,
DO PASS

CHAIRMAN--MAZUREK, JOE

NORMAL SCHEDULE==> SITE: OLD SUPREME COURT ROOM DAYS: M-TU-W-TH-F

TIME: 10:00 A.M.-12 NOON

SECRETARY-STALEY, CINDY

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0187 HARPER, HAL	1/24	3/15		CONCUR AS AMENDED		3/23
RECOVERY OF COSTS FOR ENFORCING PUBLIC WATER SUPPLY LAW						
HB0200 WALDRON, STEVE	2/07	3/15		CONCUR AS AMENDED		3/19
EXTENDING EARLY PAROLE AUTHORITY TO RELIEVE PRISON OVERCROWDING						
HB0210 CONNELLY, MARY ELLEN	2/22	3/06		CONCUR		3/6
GENERALLY STRENGTHENING DRUNK DRIVING LAWS						
HB0246 CONNELLY, MARY ELLEN	1/30	3/06		CONCUR		3/6
SEIZURE OF DRIVER'S LICENSE ON CONVICTION REQUIRING MANDATORY SUSPENSION						
HB0264 PISTORIA, PAUL G.	2/04	3/07		ADVERSE REPORT /as amended		3/7
REQUIRING BUILDING CONTRACTORS TO PROMPTLY PAY SUBCONTRACTORS, SUPPLIERS						
HB0265 REAM, BOB	2/21	3/08	3/09 3/26 3/15	CONCUR AS AMENDED		3/27
STREAM ACCESS						
HB0276 BRADLEY, DOROTHY	2/21	3/05		CONCUR AS AMENDED		3/5
TAX INFORMATION ON APPLICANTS FOR PUBLIC ASSISTANCE AUTHORIZED FOR SRS						
HB0286 KITSELMAN, LES	1/30	3/12		CONCUR AS AMENDED		3/15
PROVIDING CIVIL PENALTY FOR BYPASSING OR TAMPERING WITH UTILITY METER						
HB0293 BARDANOUE, FRANCIS	2/08	3/07		CONCUR AS AMENDED		3/7
CIVIL PENALTY FOR FAILURE TO ACKNOWLEDGE LIEN SATISFACTION						
HB0295 HARRINGTON, DAN W.	4/03	4/12		CONCUR AS AMENDED		4/15
REVISION OF MOTOR VEHICLE LEMON LAW						
HB0300 NATHE, DENNIS G.	2/14	3/11		CONCUR		3/13
EXTEND TIME FOR PROSECUTION OF SEX OFFENSES AGAINST CHILDREN						

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MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 6, 1985

The forty-second meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 6, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present with the exception of Senators Galt and Shaw, who were excused.

CONSIDERATION OF HB 390: Representative Dorothy Cody, sponsor of the bill, presented written testimony in its support (Exhibit 1). In addition, she left with the committee a copy of a court transcript to which she referred (Exhibit 2).

PROPOSERS: Kim Kradolfer, Assistant Attorney General and legal counsel for the Highway Patrol, testified this is a problem which the Highway Patrol occasionally faces. This will not affect licensing requirements, but they will be prohibited from driving a tractor drunk.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Yellowtail stated he is concerned that on page 1, line 17, we have stricken a vehicle driven by animal power. Representative Cody explained that question came up in the House hearing on this bill. The only thing she could say is probably horses had more sense than people. Senator Mazurek asked if this still would not apply to the tractor in the field, but only on the ways of the state. Representative Cody responded yes.

CLOSING STATEMENT: None.

Hearing on HB 390 was closed.

CONSIDERATION OF HB 210: Representative Mary Ellen Connelly, sponsor of the bill, testified this bill came about as a result of the increased DUI laws last session, after which they discovered a loophole. This would establish the criminal offense of vehicular assault while under the influence of alcohol or drugs. This would also establish a penalty of a fine not to exceed \$1,000 or imprisonment not to exceed one year or both.

PROPOSERS: Kim Kradolfer, Assistant Attorney General, spoke on the offense of negligent vehicular assault. There is one situation where this can occur. You can charge them with aggravated assault if they were not so drunk at the time that they had the necessary mental capability of acting purposefully and knowingly. She referred to the case of State v. Campbell, which was a negligent homicide with a death. In those instances where someone suffers serious bodily injury and does not die, there is nothing they can be charged with except a misdemeanor DUI offense. Candace Compton, representing the Highway Safety Division of the Department of Justice, testified in Montana we have approximately 3,000 injuries per year because of alcohol related accidents. This bill allows prosecution of individuals too intoxicated to prosecute otherwise.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Daniels asked what the rationale was for reducing the penalty from a felony to a misdemeanor. Representative Connelly replied the committee felt it was perhaps too strong. Senator Daniels stated he wondered about the jail sentences, because throughout the state, we don't have very many jails. Representative Connelly related how Flathead County handles this situation. Because they have had an increase in DUIs because of the task force, the jail sentence is imposed down the road a ways until there is room in the jail. They don't get off; they come back sometime in the future to serve their sentence. Senator Mazurek asked if the changes made in the current assault statutes have any impact on this. Ms. Kradolfer replied the difference between this and other assaults is the requisite mental state. Senator Blaylock asked why so much of the bill had been stricken. Ms. Kradolfer replied the bill tried to do three separate things. The third section deals with the penalties adopted last session. The pre-arrest breath test turned out to be more controversial than they thought it would be. Senator Towe asked if Section 61-8-401, MCA, defined what "under the influence" means. Ms. Kradolfer responded yes. The standard adopted by Montana courts was in State v. Kline, which says you have to show impairment. Senator Towe asked if the presumption of a .10 blood alcohol content applied. Ms. Kradolfer replied you would have to show they were guilty of DUI before applying this statute. Senator Towe asked if the presumption were in Section 61-8-401, MCA. Ms. Kradolfer replied yes. The .10 blood alcohol content is presumed drunk. From .05 to .10 is a rebuttable presumption.

CLOSING STATEMENT: Representative Connelly exhibited to the committee a pre-screening test from the Highway Patrol. She stated 23 other states have this at the present time. It costs 59¢ per test. A blood alcohol concentration of .10 is considered legally intoxicated. In Montana this last year, we had the lowest number of alcohol related deaths we have

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had in the last ten years. They contribute that to the increased enforcement of the DUI laws. In a lifetime of driving, they consider you have a 50% chance of being involved in a DUI accident.

Hearing on HB 210 was closed.

CONSIDERATION OF HB 246: Representative Mary Ellen Connelly, sponsor of HB 246, testified this is just another result of the DUI laws passed last session. This would permit the seizure of a driver's license by the court on conviction. This is mainly a housekeeping bill.

PROPOSERS: Kim Kradolfer, Assistant Attorney General, testified this bill would save a lot of time. One thing the legislature did last session was provide for immediate seizure of a driver's license upon conviction. Bill Furor, Chief, Driver Improvement Bureau, Motor Vehicle Division of the Department of Justice, testified his office is the one that does this. Last year, 5,500 people fell into this category. If this bill were to pass, it will reduce paperwork in the division and reduce time for highway patrolmen to go get these licenses. Under current law, the judge does seize the licenses for those who are convicted of an offense for mandatory revocation. They are asking the same for mandatory suspensions.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked what the difference was between mandatory suspension and revocation. With revocation, do you have to take the test over again while with a suspension you can come back after a period of time and reclaim your license? Ms. Kradolfer replied suspension is simply a shorter period of time. Revocation means you have to come back and take the test over again. Senator Towe asked what kind of an offense this bill would affect. Ms. Kradolfer replied it would affect someone who was declared an habitual offender, a first offense DUI, and other alcohol-related offenses. Senator Towe asked what revocation would apply to, the habitual offender and a third offense DUI? Ms. Kradolfer replied also a second offense DUI.

CLOSING STATEMENT: Representative Connelly stated since two years ago, this was made mandatory, but the authority wasn't given to the judge. With the budget crunch, this would save a lot of time and expense for the Highway Patrol and the division.

FURTHER QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault addressed Barbara Claassen, Assistant Attorney General and attorney for the Motor Vehicle Division. He stated we run into problems where the judge feels the defendant is entitled to a restricted probationary license. It is

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normal check is on the state of previous residence. Senator Towe asked if you were asked by the State of Arizona if there were a DUI conviction on a Montana citizen, would you relay the information to him? Mr. Tooley replied yes. Senator Towe asked if you can do that under the Criminal Justice Information Act. Mr. Tooley replied yes. Senator Towe asked if there were statutory authority in the drivers' license compact to exchange that information. Mr. Tooley replied yes.

CLOSING STATEMENT: None.

Hearing on HB 600 was closed.

ACTION ON HB 390: Mr. Petesch explained what this really does is add farm tractors and implements of husbandry and exempts bicycles and animal drawn vehicles. Senator Blaylock commented he could see putting in the tractor. However, he questioned big combines going down the road. Senator Pinsoneault stated he thinks this is a step in the right direction. Mr. Petesch stated chapters 3 and 4 are licensing and registration. Chapter 8, part 4, is specifically DUI. For purposes of only the DUI statutes, it will take in all motor vehicles, farm tractors, and implements of husbandry. Senator Pinsoneault moved HB 390 be recommended BE CONCURRED IN. The motion carried with Senator Daniels voting in opposition.

ACTION ON HB 210: Senator Towe moved HB 210 be recommended BE CONCURRED IN. Mr. Petesch explained the effect of this bill is to double the penalty for misdemeanor assault with a motor vehicle. Currently you can be convicted of misdemeanor assault for negligently causing bodily injury to another with a weapon, and there are cases that define motor vehicle as a weapon. The motion carried with Senator Daniels voting in opposition.

ACTION ON HB 246: Senator Towe moved HB 246 be recommended BE CONCURRED IN. Senator Brown stated he was still confused about the whole business between suspension and revocation. Senator Mazurek stated under the current laws, if a person is convicted of DUI; he appears before the judge; the judge writes out the result of the hearing that the person was convicted and the sentence he was issued; and he sends it to the division. The division then goes out and collects that person's license. In those cases where you have that suspension, it would allow the judge to physically take the license. Ms. Kradolfer further explained suspension is for 90 days to a year. Senator Daniels asked what you do when the person doesn't have his driver's license with him. Senator Brown asked how you got your license back. Ms. Kradolfer replied the judge would send it in with the report of the conviction. Senator Mazurek explained when the suspension time is up, they mail it back to

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ROLL CALL

SENATE JUDICIARY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 03

NAME	PRESENT	ABSENT	EXCUSE
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt			X
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw			X
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

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STANDING COMMITTEE REPORT

March 6 19 35

MR. PRESIDENT

We, your committee on JUDICIARY
having had under consideration HOUSE BILL No. 210
third reading copy (blue)
color

(Senator Brown)

GENERALLY STRENGTHENING DRUNK DRIVING LAWS

Respectfully report as follows: That HOUSE BILL No. 210

BE CONCURRED IN

~~XXXXXXXX~~

~~XXXXXXXX~~

Senator Joe Mazurek

Chairman.

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HOUSE BILL NO. 210

INTRODUCED BY CONNELLY, NELSON, VINCENT,

CHRISTIAENS, HAND, J. BROWN, BRADLEY, LORY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE CRIMINAL OFFENSE OF NEGLIGENT VEHICULAR ASSAULT WHILE UNDER THE INFLUENCE OF ALCOHOL OR OTHER DRUGS; ESTABLISHING A PRELIMINARY BLOOD ALCOHOL CONTENT BREATH TEST; AND INCREASING THE PENALTY FOR THE SECOND AND THIRD CONVICTIONS FOR DRIVING WITH AN ALCOHOL CONCENTRATION OF 0.10 OR MORE; AMENDING SECTIONS 61-8-402, 61-8-404, AND 61-8-722, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Negligent vehicular assault -- penalty. (1) If a person operates a motor vehicle in a negligent manner because AND he is driving while under the influence of alcohol OR DRUGS, AS PROVIDED FOR IN 61-8-401(1), and his conduct is the proximate cause of serious bodily injury to another, he commits the offense of negligent vehicular assault.

(2) A person convicted of the offense of negligent vehicular assault shall be FINED AN AMOUNT NOT TO EXCEED \$1,000 OR imprisoned in the state prison COUNTY JAIL for a term not to exceed 3 years or be fined an amount not to exceed \$20,000 1 YEAR, or both.

NEW SECTION. Section 2. Preliminary screening test of

breath. A peace officer who has a particularized suspicion that a person may have been driving or in actual physical control of a motor vehicle upon the ways of this state open to the public while under the influence of alcohol may request that person to submit to a preliminary screening test of his breath to determine his blood alcohol content. The test must be administered with a device and in a manner approved by the department of justice. The results of the test may be used to help the officer to decide whether an arrest should be made. In addition, or upon refusal to submit to this test, the officer may require testing under 61-8-402.

Section 3. Section 61-8-402, MCA, is amended to read:

"61-8-402. Chemical blood, breath, or urine tests. (1) Any person who operates a motor vehicle upon ways of this state open to the public shall be deemed to have given consent, subject to the provisions of 61-8-401, to a chemical test under this section of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of alcohol. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual

physical--control-of-a-motor-vehicle-upon-ways-of-this-state
open-to-the-public-while-under-the-influence-of-alcohol--The
arresting-officer-may-designate-which-one-of--the--aforesaid
tests-shall-be-administered;

{2}--Any--person-who-is-unconscious-or-who-is-otherwise
in-a-condition-rendering-him-incapable-of-refusal--shall--be
deemed--not--to--have--withdrawn--the--consent--provided--by
subsection-(1)-of-this-section;

{3}--If-a-resident-driver-under-arrest-refuses-upon-the
request-of-a-peace-officer-to--submit--to--a--chemical--test
designated---by---the---arresting--officer--as--provided--in
subsection-(1)-of-this-section, none-shall-be-given, but-the
officer-shall, on-behalf-of-the-division, immediately-seize
his--driver's--license,--The-peace-officer-shall-forward-the
license-to-the-division, along-with-a-sworn-report--that--he
had--reasonable--grounds--to-believe-the-arrested-person-had
been-driving-or-was-in-actual-physical-control--of--a--motor
vehicle--upon--ways--of-this-state-open-to-the-public, while
under-the-influence-of--alcohol--and--that--the--person--had
refused--to-submit-to-the-test-upon-the-request-of-the-peace
officer. Upon-receipt-of--the--report,--the--division--shall
suspend--the--license--for-the-period-provided-in-subsection
{5};

{4}--Upon-seizure-of-a-resident-driver's--license,--the
peace--officer--shall--issue,--on--behalf-of-the-division,--a

temporary-driving-permit, which-is-valid-for-72-hours--after
the-time-of-issuance;

{5}--The--following--suspension--and--revocation--periods
are-applicable-upon-refusal-to-submit--to--a--chemical--test
under this section:

{a}--upon-a-first-refusal, a-suspension-of-90-days-with
no-provision-for-a-restricted-probationary-license;

{b}--upon-a-second-or-subsequent-refusal-within-5-years
of-a-previous-refusal, as-determined-from-the-records-of-the
division,--a--revocation--of--1-year-with-no-provision-for-a
restricted-probationary-license;

{6}--Like-refusal-by-a-nonresident-shall-be-subject--to
suspension--by--the--division--in--like-manner, and-the-same
temporary-driving-permit-shall-be-issued-to-nonresidents;

{7}--All-such-suspensions--are--subject--to--review--as
hereinafter-provided."

Section-4,--Section--61-8-404, MEA, is-amended-to-read:

"61-8-404.---Evidence--admissible-----conditions---of
admissibility,--(1) Upon-the-trial-of-any-criminal-action-or
other--proceeding--arising--out-of-acts-alleged-to-have-been
committed--by--any--person--in--violation--of--61-8-401---or
61-8-406;

{a}--evidence--of-the-amount-of-alcohol-in-the-person's
blood-at-the-time-of-the-act-alleged, as-shown-by-a-chemical
analysis-of-his-blood, breath, or-urine--administered--under

1 61-8-4927-is-admissible;-and

2 (b)--a--report-of-the-facts-and-results-of-any-chemical
3 test-of-a-person's--blood;-breath;-or--urine--administered
4 under-61-8-402-is-admissible-in-evidence-if;

5 (i)--the--breath--analysis--report--was--prepared--and
6 verified-by-the-person-who-performed-the-test-or--the--blood
7 or-urine-test-was-a-laboratory-analysis-and-the-analysis-was
8 done--in--a-laboratory-operated-by-the-department-of-justice
9 or-by-any-other-laboratory-or-facility-certified-or--exempt
10 from-certification-under-the-rules-of-the-department;-and

11 (ii)--the--report--was--prepared--in--accordance-with-any
12 applicable-rules-of-the-department;-and

13 (iii)--if-the-test-was-on-a--blood--sample;-the--person
14 withdrawing--the--blood--must--have--been-competent-to-do-so
15 under-61-8-405(i);

16 (2)--If-the-person-under-arrest-refused--to--submit--to
17 the--test-as-hereinabove-provided;-proof-of-refusal-shall-be
18 admissible-in-any-criminal-action-or-proceeding-arising--out
19 of--acts-alleged-to-have-been-committed-while-the-person-was
20 driving-or-in-actual-physical-control--of--a--motor--vehicle
21 upon--the-ways-of-this-state-open-to-the-public;-while-under
22 the-influence-of-alcohol;

23 (3)--The-provisions-of--this-part--do--not--limit--the
24 introduction-of-any-other-competent-evidence-bearing-on-the
25 question-of-whether-the-person-was-under--the--influence-of

1 alcohol;"

2 Section-5;--Section--61-8-722;-MEA;-is-amended-to-read:

3 "61-8-722;--Penalty-for-driving--with--excessive--blood
4 alcohol--concentration;----(1)--A-person--convicted--of--a
5 violation-of-61-8-406-shall-be-punished-by-imprisonment--for
6 not-more-than-10-days-and-shall-be-punished-by-a-fine-of-not
7 less-than-\$100-or-more-than-\$500;

8 (2)--On-a-second-conviction-of-a-violation-of-61-8-406;
9 he--shall--be--punished-by-imprisonment-for-not-less-than-48
10 consecutive-hours-7-days-or-more-than-30-days-6--months;-at
11 least-48-hours-of-which-must-be-served-consecutively;-and-by
12 a--fine--of-not-less-than-\$300-or-more-than-\$500;-three-days
13 of-the-jail-sentence-may-not-be-suspended-unless--the--judge
14 finds--that--the--jail--sentence--will--pose--a--risk-to-the
15 defendant's-physical-or-mental-well-being;

16 (3)--On-a-third-or-subsequent-conviction-of-a-violation
17 of-61-8-406;-he-shall-be-punished-by--imprisonment--for--not
18 less-than-48-consecutive-hours-30-days-or-more-than-6-months
19 1--year;-at-least-48-hours--of--which--must--be--served
20 consecutively;-and-may-be-punished;-in-the-discretion-of-the
21 court;-by-a-fine-of-not-less-than-\$500-or-more-than--\$17000;
22 The--first--10-days-of-the-jail-sentence-imposed-for-a-third
23 or-subsequent-offense-that-occurred-within-5--years--of--the
24 first-offense-may-not-be-deferred-or-suspended;

25 (4)--The--provisions--of--61-5-295(2);-61-5-290(2);-and

61-11-203(2)(d) relating to revocation and suspension of
driver's licenses shall apply to any conviction under
61-8-406.

(5) In addition to the punishment provided in this
section, regardless of disposition, the defendant shall
complete an alcohol information course at an alcohol
treatment program approved by the department of
institutions, which may include alcohol or drug treatment,
or both, if considered necessary by the counselor conducting
the program. Each counselor providing such education or
treatment shall, at the commencement of the education or
treatment, notify the court that the defendant has been
enrolled in a course or treatment program. If the defendant
fails to attend the course or the treatment program, the
counselor shall notify the court of the failure.

(6) For the purpose of determining the number of
convictions under this section, "conviction" means a final
conviction as defined in 45-2-101, or a forfeiture of bail
or collateral deposited to secure the defendant's appearance
in court, which forfeiture has not been vacated. An offender
is considered to have been previously convicted for the
purposes of this section if less than 5 years have elapsed
between the commission of the present offense and a previous
conviction. If there has been no additional conviction for
an offense under this section for a period of 5 years after

a prior conviction hereunder, then such prior offense shall
be expunged from the defendant's record."

NEW SECTION. Section 2. Codification instruction. (1)
Section 1 is intended to be codified as an integral part of
Title 45, and the provisions of Title 45 apply to section 1.

(2) Section 2 is intended to be codified as an
integral part of Title 61, and the provisions of Title 61
apply to section 2.

-End-